IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

CRP.No. 2143 of 2001

(OS.216/1996 of II ADDL.SUB COURT,ERNAKULAM)

REVN. PETITIONER/PETITIONER/PLAINTIFF:

M/S. VIDEOCON INTERNATIONAL LTD.,
RAVIPURAM JN.,
KOCHI -15,
REPRESENTED BY POWER OF ATTORNEY HOLDER &
ACCOUNTS OFFICER,
M/S. VIDEOCON INTERNATIONAL LTD.,
KOCHI – 15.

BY ADV. SRI.P.JACOB VARGHESE

RESPONDENTS/RESPONDENTS/DEFENDANTS:
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1. M/S. LOGOS TRADERS,
SHASTRI ROAD,
KOTTAYAM, KERALA.

2. MR. THOMAS K. ABRAHAM,
PARTNER,
M/S. LOGOS TRADERS,
SHASTRI ROAD, KOTTAYAM.

3. MR. ANIL THOMAS,
PARTNER,
-DO- -DO-

4. MR. ANU THOMAS,
PARTNER,
-DO- -DO-

BY ADV. SRI.JOHNSON ABRAHAM
ADV. SRI.S.GOPINATHAN
ADV. SRI.NELSON ABRAHAM

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

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C.R.P. No. 2143 OF 2001

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Dated this the 23rd August, 2007

O R D E R

The question involved in this Revision is whether the court has jurisdiction to extend the period fixed by it for presentation of the plaint in the proper court.

2. The revision petitioner filed O.S.No. 216 of 1996 on the file of the Court of the Addl. Subordinate Judge, Ernakulam against the respondents for realisation of a sum of Rs. 5,61,109/-. The plaintiff paid court fee also for that amount. It is stated in the plaint that the cause of action arose on 14.12.1995.

3. An application for amendment of the plaint was filed by the plaintiff seeking to reduce the plaint claim from Rs. 5,61,109/- to Rs. 51,584/- .That application was dismissed by the court on 31.01.1998. The suit was in the list for trial. An application for adjournment of the case was filed by the plaintiff and that application was also dismissed by the court. The order by which the application for amendment of the plaint was dismissed and the order rejecting the prayer for adjournment were challenged before this court in C.R.P.No. 939 of 1998 and 940 of 1998. By order dated 21.06.1999, the Civil Revision Petitions were allowed and the plaintiff was allowed to carry out amendment of the plaint. This court also directed to restore the suit to file.

4. The amendment was carried out by the plaintiff . The suit was listed for

trial on 24.11.2000. On realising that on the basis of the valuation shown in the plaint, as amended, the suit would not be maintainable before the Sub Court, the court passed an order dated 30.11.2000 for return of the plaint. Thirty days' time was granted to the plaintiff to present the plaint before the proper court. Stating that the plaintiff received the plaint, which was ordered to be returned, only in the last week of February, 2001, an application for extension of time was filed by the plaintiff before the Sub Court. That application was dismissed by the order impugned in this Revision, holding that the court has no jurisdiction to extend the time for presentation of the plaint in the proper court.

5. Rule 10 of Order VII of the Code of Civil Procedure provides for return of plaint, which reads as follows:

> *"10. **Return of plaint:-** (1) Subject to the provisions of Rule 10 A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.*
>
> ***Explanation**: For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.*
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> *(2) Procedure on returning plaint :- On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.*

Rule 10A of Order VII of the Code of Civil Procedure is also relevant for the purpose, which reads as follows:

> *"10A. **Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return** :- (1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff .*
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> *(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court--*
>
> *(a) specifying the Court in which he proposes to present the plaint after its return.*
>
> *(b) praying that the Court may fix a date for the appearance of the parties in the said Court, and*
>
> *(c) requesting that the notice of the date so fixed may be given to him and to the defendant.*
>
> *(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-*
>
> *(a) fix a date for the appearance of the parties in the court in which the plaint is proposed to be presented, and*
>
> *(b) give to the plaintiff and to the defendant notice of such date for appearance.*
>
> *(4) Where the notice of the date for appearance is given under sub-rule (3)--*
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> *(a) it shall not be necessary for the Court in which the plaint is*

presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint"

6. When a plaint is returned for presentation before the proper court and the plaint is presented in the proper court thereafter, it is always subject to Law of Limitation. If , on the date of presentation of the plaint in the proper court, the suit is barred, it can be saved by resorting to Section 14 of the Limitation Act. The period during which the suit was being prosecuted with due diligence in another court could be excluded if the conditions prescribed under section 14 of the Limitation Act are made out. The plaintiff must also show that he was prosecuting the suit in good faith in the court, which, from defect of jurisdiction or other causes of like nature, was unable to entertain it. There is no provision in the Code of Civil Procedure empowering the court which orders return of plaint, for granting time to the plaintiff to present it in the proper court. Such a course, as is being adopted by Courts, has no legal backing. Rule 10A of Order VII

and 10B of Order VII were inserted by C.P.C. Amendment Act of 1976. Rule 10A does not authorise the court to grant time to present the plaint in the proper court. Rule 10A only authorises the court to fix a date for appearance of the parties in the court in which the plaint is proposed to be presented. When notice of the date of appearance is given to the parties under sub-rule (3) of Rule 10A , it is not necessary to serve summons to the defendants again by the court in which the plaint is subsequently presented. Notice given to the parties under sub-rule (3) of Rule 10A shall be deemed to be the summons for the appearance of the defendants in the court in which the plaint is subsequently presented. Reference to the fixing of date in Rule 10A only relates to the date of appearance of the parties and not to the date on which the plaint is to be presented in the proper court. Rule 10A provides for a special procedure, where the plaintiff is exempted from taking steps to serve summons on the defendants in respect of the plaint presented by him in the proper court. For availing that benefit, the plaintiff has to make an application under sub-rule (2) of Rule 10A. If the plaintiff makes an application and it is allowed by the court under Rule 10A, the plaintiff is thereafter precluded from challenging in appeal the order returning the plaint. By the procedure prescribed under Rule 10A, time could be saved and the parties would be enabled to appear before the proper court without wasting time. By avoiding the necessity of taking steps for

service of summons on the defendants, much time could be saved in respect of the proceedings before the court in which the plaint is subsequently presented. Rule 10A does not enable the court to pass an order saving limitation. Consequences of the return of plaint shall take its own course and it is not regulated by the procedure provided in Rule 10A.

7. In **Parameswara Kurup vs. Vasudeva Kurup (1964 KLT 145),** it was held that where a suit has been instituted in a court which is found to have no jurisdiction and it is found necessary to raise a second suit in a court of proper jurisdiction, the second suit cannot be regarded as a continuation of the first even though the subject matter and the parties to the suit were identical. It was also held that the Court where the suit was filed earlier had no jurisdiction to give one month's time to present it before the proper court and that the bar of limitation is not governed by the time so granted. In ***Parameswaran vs. Ramachandran*** **(1986 KLT 982)**, it was held thus:

> *"I have no doubt that the time allowed to the plaintiff by the wrong court after declaring that it has no jurisdiction to try the suit, is not a period during which the suit can be said to be pending in the wrong court. The grant of a grace period to re-present the suit in the proper court to save the court fee paid on the plaint, a prevalent practice in the lower courts, has really no statutory backing".*

8. I am of the view that the Court which returns the plaint under Rule 10 of the Order VII Code Civil Procedure has no jurisdiction to extend the period fixed by it for presentation of the plaint before the proper Court. The plaint was returned on the ground that the Court has no jurisdiction to entertain it. After deciding to return the plaint, the Court returning it retains no jurisdiction over the subject matter. Even inherent power under Section 151 of the Code of Civil Procedure could not be invoked in such cases.

9. It is submitted by the counsel for the respondent that the plaintiff has not presented the plaint before the proper court. Instead, an application for condonation of delay in presenting the plaint before the Munsiff's court is filed by the plaintiff. It is not clearly stated in the memorandum of Revision or in the affidavit filed in support of I.A.No.1320 of 2001 that the plaint was in fact presented before the Munsiff's Court.

I am of the view that the court below was fully justified in dismissing the application. Revision lacks merit and it is accordingly dismissed. No order as to costs.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 2143 OF 2001

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Dated this the 23rd August, 2007

O R D E R